HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.19851 OF 2006

Between:

Agrasen Cooperative Urban Bank Limited
. . .Petitioner

AND

Commissioner, Municipal Corporation of Hyderabad and others
. . .Respondents

:: ORDER ::

Counsel for the Petitioner : Shri Rupendra Mahendra

Counsel for Respondent Nos.1 & 2 : Shri Ghanta Rama Rao

20th November, 2006

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PER G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for issue of a mandamus to respondent Nos.1 and 2 to take steps to demolish the alleged illegal construction raised by respondent Nos.3 to 5 in premises bearing No.15-2-392 and 15-2-395, Siddamber Bazar, Main Road, Hyderabad.

In the counter-affidavit filed by Shri Yogesh Agarwal, General Manager of the petitioner bank, it has been averred that respondent Nos.3 to 5, whose property is on the Northern/Western side of the petitioner's property, are raising construction in violation of the municipal byelaws and zoning regulations. The deponent has further averred that as per his knowledge, respondent Nos.3 to 5 have not obtained permission from Municipal Corporation of Hyderabad for raising the construction in question, but despite representations dated 28.08.2006, 05.09.2006 and 16.09.2006, the authorities concerned have failed to take steps to stop the illegal construction.

In paragraph 3 of the counter-affidavit dated 16.11.2006 filed by Shri R.N.Chary, Assistant City Planner, Circle No.2, Municipal Corporation of Hyderabad, the deponent has averred as under:

> "In reply to paras 4 to 8 of the affidavit, after receipt of the representation from the petitioner, this respondent along with the staff inspected the site on 8.9.2006. On noticing that the columns are raised unauthorisedly a notice under Section 461 of the H.M.C. Act, 1955 (hereinafter referred to as "the Act") was issued on 9.9.2006 on the 4th respondent who claimed to be the owner of the premises asking to stop all construction activity at the site and produce the necessary documents including the ownership documents and Municipal sanction plan if any.

Thereafter as the respondent failed to furnish the copy of the plan as sanctioned by the respondent corporation a notice under section 452 of the Act was issued on 19.9.2006 asking the petitioner to show cause as to why action shall not be taken for the unauthorized construction undertaken by the Respondent Nos.3 to 5. I submit that as no reply was received a final notice under Section 636 was issued on 27.9.2006. I submit that when the officials of the respondent corporation attempt to demolish, as there was resistance, it was decided to demolish the unauthorized construction with police protection and accordingly it is decided to demolish the unauthorized construction on 20.11.2006. I submit that the said unauthorized construction would be removed on the said date with the assistance of the police. The allegation that in spite of the representation, this respondent did not take any action is not correct. I submit that in fact this respondent acted upon the representation and taken action for stopping the construction and further action will be taken for removal of the unauthorized construction as stated above."

From the above averments of the counter-affidavit, it is clear that respondent Nos.1 and 2 have already initiated action to demolish the alleged illegal construction raised by respondent Nos.3 to 5 and there is no need for issue of a mandamus in terms of the prayer made by the petitioner.

With the above observations, the writ petition is disposed of as infructuous.

As a sequel to disposal of the main petition, W.P.M.P.No.25868 of 2006 filed by the petitioner for interim relief is dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

Date: 20.11.2006

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